

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Dominion Transmission, Inc.

Docket No. RP96-383-071

ORDER ACCEPTING TARIFF SHEETS

(Issued January 13, 2006)

1. On December 16, 2005, Dominion Transmission, Inc. (Dominion) filed tariff sheets¹ setting forth the details of negotiated rate agreements with members of the Independent Oil and Gas Association of West Virginia (IOGA), and with Cabot Oil & Gas Marketing Corporation (Cabot). Dominion also requested waiver of the 30-day notice requirements to permit the referenced tariff sheets to become effective January 1, 2006. The Commission grants the request for waiver, and accepts the tariff sheets effective January 1, 2006 as requested, subject to conditions discussed below.

I. Background

2. In December 2000, Dominion submitted a settlement jointly sponsored by IOGA to resolve a limited section 4 proceeding it had filed for the purpose of unbundling its gathering and products extraction rates from its rates for transportation service (IOGA Settlement). That settlement provided for Dominion to recover all its gathering and products extraction costs by retaining specified percentages of metered gas volumes, rather than through a monetary rate. The gathering retention percentage was 9.34 percent, inclusive of the existing fuel retention percentage of 2.28 percent. The products extraction retention percentage was to start at 3.91 percent, with a reduction on July 1, 2003 to 3.51 percent. The settlement provided that the agreed upon retention percentages would remain in effect through December 31, 2005, and provided for year-to-year extensions unless cancelled by either party with twelve months prior written notice. Equitable Production Company (Equitable) opposed the settlement, contending that it should include a monetary cap on the amounts Dominion could collect. The Commission

¹ Fifth Revised Sheet No. 1404, Second Revised Sheet No. 1405, and First Revised Sheet No. 1418 to FERC Gas Tariff, Third Revised Volume No. 1.

approved the settlement for the consenting parties, including IOGA and Cabot,² and severed Equitable for further proceedings.

3. In August 2001, Dominion filed a separate settlement with Equitable (Equitable Settlement). That settlement provided for Equitable to pay a monetary rate of 0.314 cents per Dth for gathering service, plus the existing 2.28 fuel retention percentage. Similarly, the settlement required Equitable to pay a monetary rate for products extraction service. The Equitable Settlement provided that the agreed-upon rates would remain in effect through December 31, 2005 and year-to-year thereafter unless cancelled by either party upon 12 months notice. The settlement further provided that upon its expiration, Dominion shall charge Equitable its generally applicable recourse rate. The Commission approved the Equitable settlement in October 2004.³

4. Dominion recounts that in December 2004, Dominion and IOGA agreed not to cancel the IOGA Settlement through December 31, 2008. Dominion states that it also agreed, subject to Commission approval, to offer IOGA members negotiated rates for both its gathering and products extraction services, effective January 1, 2006 through December 31, 2008, with a negotiated gathering rate of 9.25 percent of metered receipt volumes, inclusive of 4.3 percent fuel, and a negotiated products extraction rate of 3.25 percent, inclusive of 0.6 percent fuel (IOGA 2005 Negotiated Rates). Dominion states that the IOGA 2005 Negotiated Rates reflect an overall reduction relative to the currently effective recourse rates, but an increase relative to the applicable fuel retention rate.

5. Dominion states that, as it had agreed, in November 2005 it extended the IOGA 2005 Negotiated Rates to all members of IOGA, as well as to all Appalachian pool operators on its gathering system. Dominion clarifies that this offer did not include pool operators who currently had agreements containing negotiated gathering and products extraction rates with Dominion for 2006. Dominion states that of the twenty-three affected pool operators on its gathering system, Dominion has entered into negotiated rate agreements with twenty of them.

6. In the instant filing, Second Revised Sheet No. 1405 lists the specific companies with whom Dominion has entered into the subject negotiated rate agreements. Fifth Revised Sheet No. 1404 sets forth the details of the relevant agreements. Specifically, Fifth Revised Sheet No. 1404 reflects that: (1) transportation will be provided under Dominion's IT Rate Schedule; (2) the primary receipt and delivery points shall be various Appalachian points; (3) the agreements shall be in effect from January 1, 2006 through December 31, 2008, extending year-to-year thereafter, unless cancelled by either party

² *Dominion Transmission, Inc.*, 94 FERC ¶ 61,329 (2001).

³ *Dominion Transmission, Inc.*, 97 FERC ¶ 61,088 (2001).

with not less than twelve months prior written notice; (4) the contract quantities shall be based on actual usage; (5) Dominion shall charge the IOGA 2005 Negotiated Rates; and, (6) the agreement does not deviate in any material aspect from the form of service agreement in Dominion's tariff.

7. First Revised Sheet No. 1418 reflects the details of the agreement between Dominion and Cabot, namely that: (1) transportation will be provided under Dominion's IT Rate Schedule; (2) the primary receipt and delivery points shall be various Appalachian points; (3) the agreements shall be in effect from January 1, 2006 through December 31, 2008, extending year-to-year thereafter, unless cancelled by either party with not less than twelve months prior written notice; (4) the contract quantities shall be based on actual usage; and, (5) the agreement does not deviate in any material aspect from the form of service agreement in Dominion's tariff. First Revised Sheet No. 1418 also states that Cabot will remit to Dominion a Gathering Charge of \$0.315 per Dth with a gathering fuel retention rate of 4.3 percent of metered receipts, and a Products Extraction charge of \$0.1690 per Dth with a products extraction fuel rate of 0.6 percent of metered receipts. Further, First Revised Sheet No. 1418 provides that Cabot is responsible to pay Usage Charges under section 5.1.A of Dominion's Rate Schedule IT, if applicable. Finally, First Revised Sheet No. 1418 provides that Cabot will be made whole for all shrinkage associated with liquids extracted from Cabot's gas stream, in exchange for which Cabot assigns to Dominion all right, title and interest to the extracted liquids.

II. Notices and Responsive Filings

8. Public notice of Dominion's filing was issued on December 27, 2005, with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2005). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Equitable Production Company (Equitable) filed a protest.

9. In its protest, Equitable states that Dominion has informed it that upon expiration of the Equitable Settlement, Dominion will charge Equitable its recourse rates, which are currently set at 9.34 percent retainage rate for gathering, which includes 2.28 percent for fuel. Equitable states that this is the rate Dominion charged members of IOGA, until January 1, 2006, at which time the rate will be reduced to 9.25 percent.

10. Equitable protests Dominion's filing, contending that Dominion's failure to offer it the same negotiated rate as it has provided Cabot is unduly discriminatory. Equitable points out that in its 2003 Policy Statement in *Natural Gas Pipeline Negotiated Rate*

Policies and Practices,⁴ the Commission emphasized its goal of minimizing undue discrimination in negotiated rate transactions. Equitable asserts that the instant negotiated rate transactions contravene that goal. Equitable recounts that it, like IOGA, established rates with Dominion pursuant to a settlement. Equitable states that Dominion provided the requisite notice of termination of the Equitable Settlement in December 2004, and that since that time, Dominion and Equitable have been in negotiations regarding the appropriate gathering and products extraction rates to be paid by Equitable after December 31, 2005. Equitable states that Dominion has informed Equitable that Dominion intends to charge its “recourse rates” as of January 1, 2006.

11. Equitable states that it has offered to pay the same rates to Dominion as Cabot, but that Dominion has refused this offer. Equitable protests that it is similarly situated with Cabot as a shipper on Dominion’s gathering system, and that the 2003 Policy Statement therefore compels Dominion to treat Equitable the same as Cabot. Equitable asserts that, under the rates currently proposed by Dominion, Equitable would be charged a discriminatory gathering rate, while Cabot would be provided an undue preferential rate.

12. Equitable asserts that section 4 of the NGA requires the Commission to act on its protest, rather than refer Equitable to an NGA section 5 complaint process. Equitable acknowledges that in accepting Dominion’s filing in Docket No. RP96-383-069 of a negotiated rate transaction between Dominion and Dominion Field Services, the Commission denied without prejudice, a similar protest by Equitable, taking the view that Equitable’s request that it be charged the same rates as another of Dominion’s customers was outside the scope of that proceeding. The Commission further suggested that, if Equitable felt it was similarly situated as the other customer, it could utilize the Commission’s complaint procedures to pursue a remedy.⁵ In the instant proceeding, Equitable asserts that in the November 30 Order, the Commission incorrectly denied its protest. Further, Equitable asserts that Dominion has not met its section 4 burden of showing that its proposed negotiated rates are just and reasonable. Equitable notes that section 4 expressly prohibits Dominion from “(1) mak[ing] or grant[ing] any undue preference or advantage to any person or subject[ing] any person to any undue prejudice or disadvantage, or (2) maintain[ing] any unreasonable difference in rates, charges, service, facilities, or in any other respect.” Equitable concludes that the Commission is obliged to address Equitable’s contentions of undue prejudice and discrimination in the instant case.

⁴ 104 FERC ¶ 61,134 at P 4, 26, 34 (2003). See also, Statement of Policy and Alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services, 74 FERC ¶ 61,076 (1996) (1996 Negotiated Rates Policy Statement).

⁵ See *Dominion Transmission, Inc.*, 113 FERC ¶ 61,219 (2005) (November 30 order).

13. In its pleading, Equitable also discusses how two other Dominion filings, abandonment applications in Docket Nos. CP05-415-000 and CP06-10-000, may inflict potential harm.

III. Discussion

14. The Commission accepts Dominion's filing and denies Equitable's protest, without prejudice to its raising the same issues in a complaint. Equitable does not assert that the negotiated rate Dominion has provided Cabot is unjust and unreasonable. Instead, Equitable argues that it should be offered the same rate as Cabot.

15. The Commission has stated that pipelines must "negotiate rates with their customers in a manner that is not unduly discriminatory and that treats similarly situated shippers similarly."⁶ However, the fact that two shippers are receiving the same services from a pipeline does not necessarily mean they are similarly situated.⁷ Whether another shipper is similarly situated involves a number of factual questions, including whether a difference in competitive factors justifies different rates.⁸ In the 1996 Negotiated Rates Policy Statement, the Commission stated that a customer wishing "to argue that it is similarly situated with a customer receiving a negotiated rate and that a pipeline has been unduly discriminatory may file a complaint with the Commission at any time."⁹ The complaint procedures set forth in Rule 206 of the Commission's regulations, 18 C.F.R. § 385.206 (2005), provide the appropriate forum for resolving any contention that a pipeline improperly failed to offer a negotiated rate to a similarly situated shipper, including investigating the relevant facts and providing an opportunity for settlement.

16. Accordingly, if Equitable believes that it is similarly situated to Cabot and thus entitled to the same rate, it may pursue a remedy by means of the Commission's complaint procedures. However, since Equitable makes no argument that the negotiated rate provided Cabot is unjust and unreasonable, the Commission sees no reason to withhold approval of that transaction. Based on the foregoing discussion, Equitable's protest and alternative request for hearing are denied without prejudice to its pursuing the same issues through the Commission's complaint procedures.

17. Further, with regard to the potential harm Equitable might suffer as a result of Dominion's applications in Docket Nos. CP05-415-000 and CP06-10-000, the

⁶ 1996 Negotiated Rates Policy Statement, 74 FERC ¶ 61,076 at 61,242 (1996).

⁷ *Williston Basin Interstate Pipeline Co.*, 85 FERC ¶ 61,247 at 62,029 (1998).

⁸ *Wisconsin Gas Co.*, 105 FERC ¶ 61,303 at P 11, 13 & 15 (2003).

⁹ *1996 Negotiated Rates Policy Statement*, 74 FERC ¶ 61,076 at 61,242 (1996).

Commission notes that Equitable filed a motion to intervene out-of-time in Docket No. CP05-415-000, and has filed a protest in Docket No. CP06-10-000. The relative merits of Equitable's pleadings in those cases, including any allegation of harm, will be considered in those proceedings.

18. Finally, the Commission notes that First Revised Sheet No. 1418 states in one place that the agreement between Dominion and Cabot shall be "effective from January 1, 2006 through December 31, 2008," and in another place that the rate shall be charged "commencing January 1, 2001 through June 30, 2003." This latter pair of dates appears to be a carry-over from the earlier version of the tariff sheet. Dominion is directed to file a revised tariff sheet within ten days of the date of this order, so that it does not contain conflicting dates of the underlying agreement's effectiveness.

The Commission orders:

(A) Dominion's tariff sheets describing the instant negotiated rate agreements be accepted for filing.

(B) Waiver of the 30-day notice requirement of section 154.207 of the Commission's regulations is granted to permit the negotiated rate agreements to take effect on January 1, 2006.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.